

# PUBLIC ACCESS TO COURT RECORDS HANDBOOK

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## Overview of 2015 Changes to Administrative Rule 9 – Access to Court Records

### Basis for Change

Administrative Rule 9 was amended and reorganized in an attempt to:

1. clarify the scope, purpose, and operation of Administrative Rule 9(G);
2. give effect to judicial interpretations of the Rule since enactment in 2005;
3. enact provisions in the Trial and Appellate Rules to implement the requirements of Administrative Rule 9(G);
4. bridge gaps that have appeared since the Rule was enacted; and
5. incorporate modifications to other rules and statutes upon which Administrative Rule 9(G) was based.

### Original Premise Remains

The original premise of the rule remains that all Court Records are open to the public.

### Records Excluded from Public Access

The previous record specific and citational lists were eliminated and instances when records are not accessible to the public are particularized by:

1. Administrative Rule 9(G)(1) - **Court Records of entire cases** excluded from public access in their entirety by statute, court rule or the Access to Public Records Act (I.C. § 5-14-3-5.5) (e.g. Juvenile, Adoption and CHINS Proceedings);
2. Administrative Rule 9(G)(2) - **Individual Case Records** excluded from public access by federal law, statute, court rule, specific court order and other specific exclusions set forth in the rule;
3. Administrative Rule 9(G)(3) - **Court Administrative Records** (e.g. JLAP records, bar admission applications and disciplinary grievances); and
4. Administrative Rule 9(G)(4) - **Court Records excluded from access by order of a court** with jurisdiction over the records due to extraordinary circumstances. This exclusion requires a verified written request to the court, notice and right to respond, a public hearing and a written order with a finding showing “extraordinary circumstances” exist.

### Party Agreements to Confidentiality

The 2015 amendment clarifies the previously stated principle that **parties cannot “agree” to exclude information from public access**. Even a protective order under Trial Rule 26 does not make information inaccessible. All of the notice and hearing requirements of Administrative Rule 9(G)(4) are required to exclude information from public access.

## Submission of Information that is Confidential

In all proceedings, **except those in which all the Court Records are excluded from public access**, if a confidential record to be excluded from public access is submitted, the party is required by Administrative Rule(G)(5) to provide a written notice of the submission.

### New Forms Available

Forms 9-G1 and G2, were created to comply with the advance notice requirement. **Simply filling a record on green paper does not satisfy the requirement of the rule.** The new notice also requires the party to **specifically identify** the basis for submitting records as confidential.

## Waiver of Confidentiality, Failure to Exclude, Improper Exclusion and Sanctions

Administrative Rule 9 (G)(6) clearly provides that absent a waiver, the express confidentiality of a Court Record is **not forfeited by a failure to comply** with Administrative Rule 9(G).

If a Court Record was not excluded from public access, the party who submitted the record must, upon learning of the failure, **immediately comply** with the requirements of Administrative Rule 9(G) to ensure proper exclusion.

If a Court Record was erroneously excluded from access, the court **shall** make the Court Record publically available seven days after notice to the parties and any person affected by the release.

Sanctions may be assessed against a party or a lawyer who fails to comply with Administrative Rule 9.

## Obtaining Access to Excluded Records

Administrative Rule 9(G)(7) sets out the procedures for obtaining access to Court Records that have been excluded from public access. Generally, this requires the filing of a verified written request, notice and a right to respond to parties or affected persons, a public hearing and a written order.

## Introduction to Public Access and Privacy Issues

Historically, Court Records in Indiana have been presumed to be open for public access, unless those records fell into certain exceptions that were deemed confidential. The philosophy of open records is grounded on the concept that government and the public interest are better served when records are open for public inspection.

The Constitution of the State of Indiana has given the Indiana Supreme Court the authority to oversee the operation of trial courts. Ind. Const. art. 7, §4. This authority includes Court Records.

The Indiana General Assembly recognized the Court's unique regarding Court Records with it enacted the Indiana Access to Public Records Law.

Indiana Code §5-14-3-4(a)(8) recognizes the authority of the Indiana Supreme Court to declare public records confidential by adopted rules. Administrative Rule 9 was developed in accordance with this authority and expresses the general premise that records are publicly accessible unless they are explicitly excluded from access. This rule seeks to assure full public access to Court Records while protecting important privacy interests and assisting court staff and Clerks' offices in providing helpful customer service.

The Rule culminated an intense ten-month effort of a special Task Force on Access to Court Records organized by the Supreme Court Records Management Committee in January 2003. The task force was chaired by Justice Brent Dickson of the Indiana Supreme Court and included a broad representation of many constituencies, including the media, victim advocacy groups, judges, private attorneys, Clerks, the Indiana Attorney General's office, and the Indiana Civil Liberties Union. The Division of State Court Administration provided staff support to the task force, and the Division continues to assist courts and Clerks' offices in the implementation of this rule.

The Rule was formally adopted by the Indiana Supreme Court on February 25, 2004, and took effect on January 1, 2005, after which time all new case filings and public access requests must comply with the Rule. ***Court and Clerk offices are not required to redact protected information or restrict access to documents or records created prior to January 1, 2005.*** Administrative Rule 9 governs confidentiality and access issues for both administrative and Case Records in all Indiana courts. Although this handbook attempts to answer some practical questions and situations users may encounter with Administrative Rule 9, it should be read in conjunction with the text of the rule.

Questions about Administrative Rule 9, access or confidentiality may be directed to the Division of State Court Administration at (317) 232-2542. More information can also be found at the Division's website at <http://www.in.gov/judiciary/admin/2488.htm>.

## **Who has access under this Rule? Administrative Rule 9(B)**

The general presumption under this Rule is that all Court Records are open to any person unless the records fall into a particular type or category that has been excluded from public access by this Rule or unless they involve a particular individual circumstance that excludes them from public access or the record has been ordered sealed by the trial court in accordance with AR 9(G)(4).

If a record, or a portion of a record, is excluded from public access for reasons other than its confidentiality by law, a publicly accessible indication of the fact of its exclusion must be created. AR 9(D)(3) requires that any and all redactions be identified. The phrase "not-public information" or an equivalent designation may be used. A court's access management authority does not extend to denial of access to a public record allowed under AR 9(D)(1) or denial of the

opportunity for playback of recorded hearings when playback is requested by a litigant, member of the public or the news media.

A court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court and to comply with prohibitions on broadcast of court proceedings outlined in Indiana Judicial Conduct Rule 2.17. The commentary to Administrative Rule 10, Security of Court Records, provides additional guidance regarding access to audio and video recordings of court proceedings. The Commentary to Administrative Rule 10 reads:

*The court is required to preserve the integrity of audio and video recordings of court proceedings. The judge may employ various methods for ensuring the recording is not altered, including but not limited to supervised playback for listening or copying, creating a copy of the recording for use during said playback, serving notice to the parties that the recording is being accessed, and providing a copy, clearly identified as such. As prescribed by Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)], because the court is further required to prohibit broadcasting or televising court proceedings, the court may employ methods to restrict publication of copies of court proceedings made during the pendency of the case.*

Effective July 1, 2014, the Indiana Supreme Court amended the rule to allow access to prospective lawyers in juvenile paternity cases and the lawyers' agents, upon the lawyer's filing with the court an *Assurance of Confidentiality* in substantial compliance with the form appended to this Rule. The form can be found in Appendix

At times, records that are otherwise excluded from public access are shared with other governmental agencies, such as law enforcement, administrative agencies, or schools. More particularly, specific data contained within records, such as Social Security Numbers or addresses, is shared with these other governmental agencies to maximize the effectiveness of the court proceeding. Another instance of information sharing would include account numbers or Social Security Numbers that may be required in court orders submitted to banks or employers for garnishment purposes. Despite these particular instances when non-public information is shared with other agencies or entities to give effect to court orders or other official proceedings, Administrative Rule 9 still requires that non-public information, such as full Social Security Numbers of living persons and full account numbers, or in the instance of certain causes of action, dates of birth, address, and other identifying information is excluded from public access to the court file. *In instances where a court order contains non-public information, the full order is produced on light green paper for inclusion in the non-public case file and a redacted copy is made available for general public access.*

**Example:**

*An individual petitions a court for an order of protection. The court grants the petition and issues an order. As part of the order process, the court generates a protective order cover sheet that contains the Social Security Number of all protected parties covered by the order. The order also contains the date of birth of the petitioner. Social Security Numbers and dates of birth are excluded from*

*public access but to maximize the effectiveness of the protective order, it is necessary to share this information with law enforcement agencies and other governmental agencies who are involved in the protective order process. While the Social Security Number is not be available to the general public, law enforcement and other court agencies who help execute the order of protection fall within the scope of “other governmental agencies or agencies assisting the court. The court must ensure that the Social Security Numbers and other information excluded from public access are not available in the public case file and this may result in the need for a redacted order in the public file and a complete order with all information in the confidential file.*

## **Definitions – Administrative Rule 9(C)**

The Rule provides definitions to help clarify what is meant by particular sections of the rule. A brief synopsis of these terms is provided in the pages that follow.

**Court Record.** A Court Record is considered to include both a Case Record and an Administrative Record.

**Case Record.** Any document, information, data or other item created, collected, received or maintained by a court, court agency, or Clerk of court in connection with a particular case. This category includes motions, pleadings, orders, evidence accepted by the court, etc.

**Court Administrative Record.** Any document, information, data or other item created, collected, received, or maintained by a court, court agency, or Clerk of court pertaining to the administration of the judicial branch of government and not associated with any particular case. This category includes timesheets, phone records, memoranda, etc.

**Court.** When used in Administrative Rule 9, this term can refer to any court in Indiana, including the Indiana Supreme Court, the Court of Appeals, the Indiana Tax Court, circuit, superior, probate, county, city, town, and small claims courts.

**Clerk of Court.** When used in Administrative Rule 9, this term can refer to any Clerk of court, including the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court, Clerks of the circuit, superior, probate, county, city, town, and small claims courts. Clerk’s office staff are included in this term.

**Public Access.** This term means the process by which a person may inspect and copy the information in a Court Record.

**Remote Access.** This refers to the ability of a person to inspect and copy information in a Court Record in electronic form through an electronic means, such as a computer or the Internet.

**In Electronic Form.** This means any information in a Court Record in a form that is readable through the use of an electronic device, regardless of the manner in which it was created.



**Bulk Distribution.** This means the distribution of all, or a significant subset of the information in Court Records in electronic form, as is, and without modification or compilation.

**Compiled Information.** This means information that is derived from the selection, aggregation or reformulation of some of all or a subset of all the information from more than one individual Court Record in electronic form.

*Commentary to Administrative Rule 9(C)*

*“Case Record” refers to records connected with a particular case. It does not include other records maintained by the Clerk of Court, including, but not limited to, election records, marriage and other license functions; copies of notary bonds; oaths and certificates of public officials other than oaths of judicial officers and attorneys; lists, including those for distressed sales, licensed child placing agencies; reports of perpetual care of cemetery endowment accounts; and certificates of inspection and compliance of chemicals and chemical tests results and certifications of breath test operators; delinquency personal property taxes; hunting and fishing licenses; conflict of interest statements, passports; and the filing of reports from state agencies, such as the Alcohol Licensing Board.*

*The definition of Case Record is medium neutral and access neutral, and is intended to apply to every Case Record, regardless of the manner in which it was created, the form(s) in which it is stored, or other form(s) in which the information may exist.*

*A “Court Administrative Record” may include, but not be limited to, the roll of attorneys, rosters of medical review panels and group legal services, records relating to elections to the Judicial Nominating Commission, statistical reports, local Court rules, jury pool list records, general court orders, budget and expenditure records, and record of receipts of funds. The term “Court agency” in subsection (C)(3) includes without limitation the Indiana Judicial Center and the Judicial Conference of Indiana.*

## **General Access Rule – Administrative Rule 9(D)**

All Court Records, regardless of the manner of creation, method of collection, form of storage, or the form the record is maintained are accessible to the public except as provided in Administrative Rule 9(G).

If a Court Record or a portion of it is excluded from public access, a publically accessible indication of the exclusion is required unless the court proceedings or Court Administrative Records are confidential by law. Any and all redactions be identified. The phrase “not-public information” or an equivalent designation may be used

In order to avoid substantial interference with resources, normal operations, or comply with Judicial Conduct Rule 2.17, a court may manage access to audio and video recordings of its proceedings.

*Commentary to Administrative Rule 9(D)*

*The objective of this section is to make it clear that this rule applies to information in the Court Record regardless of the manner in which the*

*information was created, collected or submitted to the court. Application of this rule is not affected by the means of storage, manner of presentation or the form in which information is maintained. To support the general principle of open access, the application of the rule is independent of the technology or the format of the information.*

*Subsection (D)(3) requires that any and all redactions be identified. The phrase “not-public information” or an equivalent designation may be used.*

## **Providing Remote Access – Administrative Rule 9(E)**

The tremendous advances of modern technology provide courts and Clerk’s offices with the ability to provide public access to records through electronic means. Although Administrative Rule 9 does *not require* courts or Clerks to provide electronic access to Court Records, it encourages them to provide remote access.

If remote access is provided, courts and Clerks are encouraged to provide the following types of information:

- litigant / party indexes
- listings of new case filings, including party names
- chronological case summaries of cases
- calendars or dockets of court proceedings
- judgments, orders or decrees.

Upon the request and at an amount approved by the majority of judges of courts of record in the county, the County Board of Commissioners may adopt an electronic system fee to be charged in conjunction with electronic access to Court Records. In the instance of records from multiple courts, the Supreme Court may adopt such a fee. The fee must be approved by the Division of State Court Administration and the method of its collection, deposit, distribution and accounting must be approved by the Indiana State Board of Accounts.

In deciding to provide remote access to Court Records, courts and Clerks should be mindful of restrictions on public access and also ensure that any remote access does not expose the court’s case management system to unnecessary burden or risk of damage through inappropriate access, hacking, or viruses.

Remote access may increase efficiency in court and Clerk offices because many routine questions or requests may be answered by public access to the information through remote means.

Courts and Clerks who wish to provide remote access to court information are required by Trial Rule 77(K) to submit a request to the Division of State Court Administration for approval of the form of access and the information to be included. To view Trial Rule 77, see:

[http://www.courts.in.gov/rules/trial\\_proc/index.html#\\_Toc244662981](http://www.courts.in.gov/rules/trial_proc/index.html#_Toc244662981)

Administrative Rule 9 contemplates that courts and Clerks may wish to post more information than basic indexes and CCS entries to a medium such as the Internet. With that intent in mind, the forms associated with this handbook provide a means for parties and their legal counsel to file information that is otherwise excluded from public access separate from documents, such as pleadings or motions that may otherwise be available for public access. These companion forms would be kept separate from the publicly accessible portions of a case file in the physical file and would not be available to the general public in an electronic version.

**Obtaining permission to provide Court Records by remote access is an intricate process. See Appendix B for a checklist with respect to this process.**

## **Bulk Distribution and Compiled Information – Administrative Rule 9(F)**

A request for bulk distribution of records is one that asks for all, or a significant subset, of the records from a court's case management system. Under the terms of Administrative Rule 9, bulk record requests do not require manipulation of the data. A bulk distribution is simply an output that contains all the records and all the data fields contained in those records. These types of requests are frequently made by commercial information providers or by entities conducting research.

Compiled information requests, however, require some manipulation of data, either through filtering so that only particular records are included, or through editing or redaction of records to provide specific information.

Almost all requests for bulk distribution or compiled information are submitted to the Division of State Court Administration for evaluation and approval. The provisions of Administrative Rule 9 require that requests are handled centrally so they are dealt with in a similar fashion. However, if the news media requests nonconfidential, compiled information from the case management system of courts or Clerks within a judicial circuit and the information is normally available to the public via public access, the court or Clerk may grant the request without submitting the request for approval by State Court Administration. See Administrative Rule 9(F)(1)(c).

The Division of State Court Administration reviews the bulk distribution or compiled information request, and, if it is possible to accommodate the request, the Division will either process the request directly through the State Court Administration's Court Technology division for data from the Odyssey Case Management System or forward the request to the appropriate jurisdiction for further action if fulfilling the request could only be done by a local court or Clerk's office.

Standard forms for bulk or compiled information requests are in Appendix A of this Handbook. While it is not necessary for an applicant to use the form, it does elicit all the information required by the Division to evaluate a request. Up to date forms are also available at <http://www.in.gov/judiciary/admin/2459.htm>.

Requests for information that is otherwise publicly available are granted if technically feasible and the resources to generate the information are available. Requests for information that is not

publicly accessible require a higher level of scrutiny. The Division may still accommodate these types of requests, but information that is excluded from public access will still be excluded.

In all instances the requesting party may be required to pay the reasonable costs of responding to the request for information.

***Example:***

*A national criminal record database submits a request to the Division of State Court Administration for bulk transmission of all criminal records available through the Odyssey statewide case management system. The Division reviews the request and notes that the information requested contains the Social Security Numbers of all defendants. Since Social Security Numbers are excluded from public access, the availability of that data will be limited. The Division processes the request, forwards it to Court Technology for preparation of the data, and then ultimately transmits the data to the applicant. The data transmission will contain all of the information requested, with the exception of the Social Security Number field which will contain only the last four digits of the Social Security Number.*

*Commentary to Administrative Rule 9(F)*

*Section (F)(3) authorizes Courts, in their discretion, to provide access to Bulk Distribution and Compiled Information that is accessible to the public. It does not require that such information be made available. Permitting Bulk Distribution or Compiled Information should not be authorized if providing the data will interfere with the normal operations of the court.*

*In allowing bulk or compiled data requests, Courts must limit bulk data to Court Records, even if those requesting this information are seeking other information which is governed by other agencies' policies.*

*Generating compiled data may require Court resources and generating the Compiled Information may compete with the normal operations of the Court for resources, which may be a reason for the Court not to compile the information. However, it may be less demanding on Court resources to instead provide Bulk Distribution of the requested information pursuant to section (D)(3), and let the requestor, rather than the Court, compile the information. Courts may charge for the fair market value of bulk or Compiled Information provided under Section (F)(3).*

*Section (F)(4) allows only the Supreme Court to grant requests for bulk or Compiled Information that is excluded from Public Access and only when the request is made by research and/or governmental entities. The general intent of (F)(4)(d) is that the last four digits of social security numbers and years of birth, rather than entire birth dates and social security numbers, are sufficient for matching records and to ensure that someone is correctly identified in bulk or compiled records. Courts should provide more complete social security numbers or other identifying information only in extraordinary circumstances.*

## **Records Excluded From Public Access – Administrative Rule 9(G)**

Administrative Rule 9(G) was substantially reworked and reorganized by the Indiana Supreme Court in 2014. The changes became effective January 1, 2015.

### **Court Records – Administrative Rule 9(G)(1)**

The former two page list of excluded records has been replaced with a more succinct statement of excluded records.

Excluded Court Records:

- Entire cases where all Court Records are declared confidential by statute or other court rule,
- Entire cases where all Court Records are sealed in accordance with the Access to Public Records Act (I.C. § 5-14-3-5.5) and
- Entire cases where all Court Records are excluded from Public Access by specific Court order entered in accordance with 9(G)(4).

### **Individual Case Records - Administrative Rule 9(G)(2)**

Excluded Case Records:

- Case Records declared confidential or excluded from Public Access pursuant to federal law,
- Case Records excluded from Public Access or declared confidential by Indiana statute or other court rule,
- (c) Case Records excluded from Public Access by specific Court order entered in accordance with 9(G)(4),
- Case Records sealed in accordance with the Access to Public Records Act (I.C. § 5-14-3- 5.5),
- Case Records for which a statutory or common law privilege has been asserted and not waived or overruled,
- Complete Social Security Numbers of living persons, with the exception of names, information such as addresses (mail or e-mail), phone numbers, and dates of birth which explicitly identifies:
  - natural persons who are witnesses or victims (not including defendants) in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings, provided that juveniles who are victims of sex crimes shall be identified by initials only or
  - places of residence of judicial officers, Clerks and other employees of courts and Clerks of court,

unless the person or persons about whom the information pertains waives confidentiality,

- Complete account numbers of specific assets, loans, bank accounts, credit cards, and personal identification numbers (PINs),
- All personal notes, e-mail, and deliberative material of judges, jurors, court staff, and judicial agencies, and information recorded in personal data assistants (PDAs) or organizers and personal calendars,
- Arrest warrants, search warrants, indictments, and informations ordered confidential by the trial judge, prior to return of duly executed service,
- All paternity records created after July 1, 1941, and before July 1, 2014, as declared confidential by statutes in force between those date, which statutes were amended by P.L. 1-2014, effective July 1, 2014.

### **A Special Word about Drug Test Results or Psychiatric Evaluation Reports**

Many courts order periodic drug tests as a part of probationary sentence or participation in a work release program as well as psychiatric evaluations of criminal defendants, witnesses or parties to other non-criminal proceedings. Participants in problem solving courts may also undergo substance testing.

Such test results may or may not be confidential. I.C. 5-14-3-4(a)(9) provides that **patient** medical records and charts created by a provider are confidential unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8. Thus, a basis for confidentiality may exist under Administrative Rule 9(G)(2)(b) – Case Records excluded from public access by Indiana statute. Similarly, federal law may declare the records confidential. See 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2.

Often, the key is whether the person tested or evaluated was a “patient”. Persons tested as a part of a sentence or judgment or who are evaluated concerning mental competency for trial or to testify are seldom, if ever, “patients” or the records are not created as part of a therapeutic setting or treatment plan for the individual. Under these circumstances, the records are not confidential.

However, tests or evaluations arising from participation in a problem solving court may very well occur in a “patient” or therapeutic setting with the records being confidential under both Indiana and federal law.

As a precaution, courts may choose to require execution of a waiver of confidentiality by a defendant as a conditions of probation or their admission into a problem solving court.

### **Excluded Court Administrative Records - Administrative Rule 9(G)(3)**

Excluded Court Administrative Records:

- Case Records excluded in 9(G)(2) and
- Court Administration Records excluded from Public Access or declared confidential by Indiana statute or other court rule.

## **Excluding Other Court Records From Public Access – Administrative Rule 9(G)(4)**

In extraordinary circumstances, a court having jurisdiction over the record, may exclude an otherwise publicly accessible Court Record. The person affected by the release of information must file a verified, written petition which demonstrates prohibiting access will substantially serve the public interest, access or dissemination of the Court Record will create a substantial risk of harm to the petitioner, others or the general public, and a substantial prejudicial effect to ongoing proceedings cannot be avoided with prohibition of public access. Once the petition is filed, the Court Record becomes confidential for a reasonable period of time while the court rules upon the petition.

Upon filing the petition, the petitioner is required to give notice of the application to the parties or such others as the court may require. The petitioner must provide proof of notice given or the reason why notice could be given or required. A party receiving notice is allowed twenty days to respond to the request.

Thereafter, the court may either deny the request without a hearing or conduct a hearing after posting advance notice of the hearing in accordance with I.C. 5-14-2-5. Upon completion of the hearing, the court, if it grants the petition, is required to enter a written order stating its reasons, finding the petitioner has proven the requirements of the petition by clear and convincing evidence, balances public access interests with the grounds demonstrated by the petitioner and uses the least restrictive means and duration in prohibiting public access.

Note – The Indiana Supreme Court has previously determined party agreements cannot circumvent public access to court documents.

The requirements of the petition process of Administrative Rule 9(H) were upheld and enforced by the Indiana Supreme Court in [\*Travelers Casualty and Surety Company et al v. United States Filter Corporation et al\*, 895 N.E.2d 114 \(Ind. 2008\).](#)

In *Travelers*, all or substantially all, the parties presented the trial court with a Confidentiality Stipulation and Order that the court approved and entered into the record. The stipulation provided that the parties agreed the litigation might involve discovery and disclosure of privileged or confidential and sensitive information, that extrinsic agreements might restrain the use of such material and that it would be desirable to have in place a confidentiality order governing production of all confidential material in the case. The stipulation outlined a framework under which information tendered to the trial court or material shared by the parties, both to each other and to the trial court would be confidential. Material designated as confidential could be retrieved or would be purged from the court's records. The confidentiality stipulations were also made retroactive to the date any confidential document was produced.

The Supreme Court noted that the stipulated order was entered and followed in both the trial court and on appeal without the holding of a public hearing as

required by Administrative Rule 9(H). The Court directed the parties to show cause why the trial court order should not be vacated and the entire record be made public.

After reviewing the party responses, the Supreme Court vacated the order for confidentiality. It distinguished between confidentiality agreements concerning information exchanged between parties during litigation and materials tendered to a court that are subject to the public policy established by both the Indiana General Assembly and the Supreme Court concerning public accessibility.

The Court also distinguished the situation in *Travelers* from that presented in [\*Richey v Chappell\*, 594 N.E.2d 443 \(Ind. 1992\)](#), in which it had recognized a statement of an insured to its insurer as being privileged from discovery. The Court ruled that a communication privileged under statute, rule or common law principle that prevented its discovery by others does not exclude it from public access once the information has been submitted to a court.

The Court found that once a party or non-party tenders documents or information that would otherwise be privileged it must follow the procedure of Administrative Rule 9(H) and ask the Court to exclude it from public access after a public hearing and a determination that the factual bases required by the rule have been established.

### **Sealing Records under the Indiana Access to Public Records Law, IC 5-14-3-5.5**

Administrative Rule 9 does not limit the authority of a Court to seal Court Records under Ind. Code § 5-14-3-5.5. Proceedings to seal Court Records under the statute require a publicly noticed hearing in which parties or members of the general public must be permitted to testify and submit written briefs. The person seeking the sealing of the record has the burden of proof upon the issue by **a preponderance of the evidence** as opposed to the standard of clear and convincing evidence found in Administrative Rule 9.

In ruling upon a request to seal the records, the Court is required to make written findings of fact and conclusions of law showing that the remedial benefits to be gained by effectuating the public policy of the state declared in I.C. 5-14-3-1 are outweighed by proof that:

- (1) a public interest will be secured by sealing the record,
- (2) dissemination of the information contained in the record will create a serious and imminent danger to that public interest;
- (3) any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the record;
- (4) there is a substantial probability that sealing the record will be effective in protecting the public interest against the perceived danger; and
- (5) it is reasonably necessary for the record to remain sealed for a period of time.



All sealed records must be unsealed at the earliest possible time after the circumstances that prompted the sealing of the records end.

## **Procedure for Excluding Court Records From Public Access – Administrative Rule 9(G)(5)**

### **Cases Where Only a Portion of the Court Record Is Excluded from Public Access – Administrative Rule 9(G)(5)(a)(i)**

A party or person submits a confidential record must provide notice that the record is to remain excluded from Public Access.

- Offered pleadings or papers. A Court Record filed with the Clerk of Court that is to be excluded from Public Access must be accompanied by separate written notice identifying the specific 9(G)(2) or 9(G)(3) ground(s) upon which exclusion is based. See Form 9-G1.
- Exhibits. A Court Record tendered or admitted into evidence during an in camera review, hearing, or trial that is to be excluded from Public Access must be accompanied by separate written notice identifying the specific 9(G)(2) or 9(G)(3) ground(s) upon which exclusion is based. See Form 9-G2.
- Oral statements in transcript on appeal. If any oral statement(s) contained in the transcript on appeal is to be excluded from Public Access, then **during the hearing or trial**, the Court Reporter must be given notice of the exclusion and the specific 9(G)(2) or 9(G)(3) ground(s) upon which that exclusion is based. If notice was not provided during the hearing or trial, any party or person may provide written notice in accordance with Appellate Rules 28(A)(9)(C) or (D). The Court Reporter is required to comply with Appellate Rules 28(A)(9) and 29(C) when preparing the transcript on appeal.

### **Court Records Excluded under Administrative Rule 9(G)(1) - Administrative Rule 9(G)(5)(a)(ii)**

In cases where all Court Records are excluded from Public Access in accordance with Administrative Rule 9(G)(1), a notice of exclusion from Public Access is not required.

### **Green Paper Requirements – Administrative Rule 9(G)(5)(b) – Formerly the “Light Green Paper” Rule**

Only a Portion of the Court Record has been Excluded from Public Access pursuant to 9(G)(2) or 9(G)(3).

#### Public Access Version.

The document or exhibit is filed on white paper and any Court Record excluded from Public Access is omitted or redacted from this version. The omission or redaction is indicated at the place it occurs in the Public Access version.

#### Non-Public Access Version.

If the omission or redaction in accordance with 9(G)(5)(b)(i) is not necessary to the disposition of the case, the excluded Court Record is not filed or tendered in any form and only the Public Access version is required.

If the omission or redaction in accordance with 9(G)(5)(b)(i) is necessary to the disposition of the case, the excluded Court Record is separately filed or tendered on green paper and conspicuously marked “Not for Public Access” or “Confidential,” with the caption and number of the case clearly designated and:

1. If the Court Record is omitted or redacted from an exhibit, attachment, appendix, transcript, evidentiary designation, or similar document, then the separately filed or tendered Non-Public Access version shall consist only of the omitted or redacted Court Record on green paper, with a reference to the location within the Public Access Version to which the omitted or redacted material pertains.
2. If the Court Record is omitted or redacted from a motion, memorandum, brief, or similar document containing substantive legal argument, then the separately filed Non-Public Access version shall consist of a complete, consecutively-paginated replication including both the Public Access material on white paper and the Non-Public Access material on green paper.
3. The green paper requirements set forth in 9(G)(5)(b) do not apply to cases in which all Court Records are excluded from Public Access under to 9(G)(1). With respect to documents filed in electronic format, the Court may, by rule, provide for compliance with this rule in a manner that separates and protects access to Court Records excluded from Public Access.

### **Waiver, Failure to Exclude, Improper Exclusion and Sanctions – Administrative Rule 9(G)(6)**

#### **Waiver of Exclusion**

A party or person affected by release of a Court Record can waive the right to exclude the record from public access. Administrative Rule 9(G)(6)(a)(i).

Once waiver has occurred, a party or person who seeks to reassert the right to exclude the record from public access is required to use the procedures specified by Administrative Rule 9(G)(4). See Administrative Rule 9(G)(6)(a)(ii).

#### Failure to Exclude and Duty to Act

Failure to exclude a record that is confidential does not forfeit a right to exclude a Court Record unless waiver has occurred. A party who submits a record that is confidential is required to act immediately to ensure proper exclusion upon learning the record was not excluded from public access. See Administrative Rule 9(G)(6)(b).

#### Improper Exclusion of a Court Record from Public Access

Once a court determines that a Court Record was erroneously excluded from public access, it is required to make the record available for public access within seven days of giving notice to the parties or any person affected by the release unless the provisions of Administrative Rule 9(G)(4) were met. See Administrative Rule 9(G)(6)(c).

#### Sanctions

A party or attorney failing to comply with any provision of Administrative Rule 9(G) is subject to sanctions. See Administrative Rule 9(G)(6)(d).

### **Obtaining Access to Court Records Excluded from Public Access – Administrative Rule 9(G)(7)**

A Court Record excluded from Public Access can become accessible in two ways:

1. Each person affected by the release of the Court Record waives confidentiality by intentionally releasing such Court Record for Public Access. See Administrative Rule 9(G)(6)(a) or
2. A Court with jurisdiction over the case declares:
  - a. the Court Record should not have been excluded from Public Access;
  - b. the 9(G)(4) order was improper or is no longer appropriate;
  - c. the Court Record is essential to the resolution of litigation; or
  - d. disclosure is appropriate to further the establishment of precedent or the development of the law.

In order for a court to enter an order making a record accessible to the public, the person seeking access must file a verified, written request that demonstrates:

1. The existence of extraordinary circumstances requiring deviation from the general provisions of Administrative Rule 9(G),
2. The public interest will be served by allowing access,
3. Access or dissemination of the Court Record does not create a significant risk of substantial harm to any party, to third parties, or to the general public ,
4. The release of the Court Record does not create a prejudicial effect to on-going proceedings or
5. The Court Record should not be excluded for Public Access under 9(G)(1), 9(G)(2) or 9(G)(3). See Administrative Rule 9(G)(7)(b)(i).

Once a request is made for access to Court Records excluded from Public Access, the Court Record remains confidential until the Court rules on the request.

The person seeking access has the burden of providing notice to the parties and any other persons the Court may direct and is required provide proof of notice to the court or the reason why notice could not or should not be given consistent with the requirements found in Trial Rule 65(B). See Administrative Rule 9(G)(7)(b)(ii).

A party or person given notice has twenty (20) days from receiving notice to respond to the request.

A Court may deny the request for access without a hearing but, if it does not, the court must post advance public notice of the hearing consistent with the notice requirements found in I.C. §5- 14-2-5. After posting notice, the Court must hold a hearing on the request to allow access. If the court grants access, it is required to issue a written order that:

1. States the reasons for granting the request,
2. Finds the requestor has demonstrated by clear and convincing evidence that any one or more of the requirements of Administrative Rule 9(G)(7)(b)(i) have been satisfied and
3. Considers the Public Access and the privacy interests served by Administrative Rule 9(G) and the grounds demonstrated by the requestor.

In its order, a court may place restrictions on the use or dissemination of the Court Record to preserve confidentiality.

*Commentary to Administrative Rule 9(G)(7)*

*As noted previously, Rule 9 starts from the presumption of open public access to Court Records. To address those limited circumstances where federal statute, state statute, or court rule has declared Court Records to be confidential, this section provides the mechanism by which these confidential Court Records are to be excluded from Public Access.*

*Section G(1) begins by recognizing that, in some instances, an entire case must be excluded from Public Access because all Court Records have been declared confidential, but Sections G(2) and (3) make clear that in most instances it is only individual Case or Administrative Records that have been declared confidential. As provided in Ind. R. Evid. 201(b)(5), a court can take judicial notice of the records of any court of this state, which includes the juvenile records of another court of this state.*

*This section does not limit the authority of a judge in a particular case to order the sealing of particular records pursuant to the specific requirements of I.C. §5-14-3-5.5 or to enter an order excluding Court Records from Public Access in accordance with the specific requirements of G(4). No other type of court order is sufficient to seal or exclude Court Records from Public Access.*

*Section G(4) addresses those extraordinary circumstances in which information that is otherwise publicly accessible nonetheless is to be excluded from Public Access. This section generally incorporates a presumption of openness and*

*requires compelling evidence to overcome this presumption, as well as public notice, a public hearing, and a written order containing specific findings. While a request made under Section G(4) treats the Court Record as confidential from the time of filing or tendering until the court rules on the request, parties should be aware that their request is not retroactive. Copies of the Court Record already may have been disseminated prior to any G(4) request, and action taken under G(4) will not affect those records.*

*Section G(5) provides the specific procedures for excluding Court Records from Public Access. The party or person submitting the confidential record has the burden of providing separate, written notice identifying the grounds upon which exclusion is based. See Forms 9-G1 and 9-G2. The act of filing a Court Record on green paper does not constitute the required notice.*

*The 9(G)(5)(a)(i)(c) notice requirements for excluding oral statements contained in a transcript apply only to transcripts that are filed with the Clerk by the Court Reporter for use on appeal. The requirements of this provision do not apply to private transcripts that are never filed with the Clerk. If a party or person thereafter files or tenders that private transcript to the Clerk or Court, then the notice requirements in 9(G)(5)(a)(i)(a) or (b) will apply.*

*In addition to the separate written notice, in most instances, Section G(5)(b) requires filing or tendering of both a Public Access version and a Non-Public Access version. The Public Access version is to be on white paper, with the confidential information redacted (if it is only part of a page) or omitted (if it is a whole page). If a whole page is omitted, some type of notation must be made at the precise place in the Public Access version indicating where the omission occurred. The Non-Public-Access version is to be on green paper and must contain the confidential material redacted or omitted from the Public Access version, unless the omitted or redacted confidential material is not necessary to the disposition of the case (such as a social security number, a bank number, etc.), in which instance the redacted or omitted material need not ever be separately tendered or filed on green paper and only a Public Access version is required.*

*Section G(6) permits waiver of confidentiality by the party or person affected by the release of the Court Record, but in all other instances in which a Court Record has been declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3), such confidentiality is not forfeited.*

*If a court determines that a party has improperly excluded Court Records from Public Access without first satisfying G(1), G(2), or G(3), those records shall be made available for Public Access unless, within seven days after notice of the improper exclusion has been sent, the party or person affected by the release of such records files a verified request to exclude pursuant to G(4).*

*Section G(7) is intended to address those extraordinary circumstances in which confidential information or information which is otherwise excluded from Public Access is to be included in a release of information. In some circumstances, the nature of the information contained in a record and the restrictions placed on the accessibility of the information contained in that record may be governed by federal or state law. This section is not intended to modify or overrule any federal or state law governing such records or the process for releasing information.*

## **When Court Records May Be Accessed – Administrative Rule 9(H)**

This section was formerly section (J) but remains unchanged from its prior version except for references set out in subparagraph 2.

Court Records which are publicly accessible are available for public access in the courthouse during regular business hours established by the court. Court Records in electronic form to which the court allows remote access under this policy are available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.

Upon receiving a request pursuant to section (F)(4) or (G) of the rule, a court is required to respond within a reasonable period of time. While “reasonable time” is not defined, a best practice would be to follow the time periods contained in the statute.

### *Commentary to Administrative Rule 9(H)*

*This section does not preclude or require “after hours” access to Court Records in electronic form. Courts are encouraged to provide access to records in electronic form beyond the hours access is available at the courthouse, however, it is not the intent of this rule to compel such additional access.*

## **Contracts with Information Technology Vendors – Administrative Rule 9(I)**

This section was formerly section K and remains unchanged other than by its relocation.

Courts and Clerks who are parties to agreements with information technology vendors, are required to abide by certain provisions in Administrative Rule 9 concerning the ownership and handling of Court Records. These restrictions apply regardless of whether the agreements pertain to case management systems, hardware or network support, or other computer services, or whether the agreements are with private contractors or consultants or another branch of state or county government.

First, any arrangement for information technology services that involves an entity outside the court or Clerk’s office must explicitly require that entity comply with all of the provisions of Administrative Rule 9. This requirement essentially requires the vendor to assume responsibility for understanding the Rule and complying with it.

Second, each contract or arrangement with an information technology provider must require that the vendor assist the court in its role of educating litigants and the public about their ability to access information. Employees and sub-contractors of the vendor must also be trained by the vendor to understand this Rule and abide by its requirements.

Third, each contract must require vendors to obtain approval before providing any bulk or compiled records or other information transfers.

Finally, each contract or arrangement must contain a provision that the vendor acknowledges the records remain the property of the court and the use of the information or the records is subject to orders of the court.

The provisions of this rule do not affect contracts that executed prior to the effective date of Administrative Rule 9. However, as contracts are renegotiated, or renewed, they must be compliant with this provision. For long-term or on-going contracts that are already in place, a court or Clerk may wish to see if the vendor will execute a contract addendum reflecting these provisions, or at a minimum, acknowledge these points in a letter to reflect their compliance.

*Commentary to Administrative Rule 9(I)*

*This section is intended to apply when information technology services are provided to a court by an agency outside the judicial branch, or by outsourcing of court information technology services to non-governmental entities. Implicit in this rule is the concept that all Court Records are under the authority of the judiciary, and that the judiciary has the responsibility to ensure Public Access to Court Records and to restrict access where appropriate. This applies as well to Court Records maintained in systems operated by a Clerk of Court or other non-judicial governmental department or agency.*

*This section does not supersede or alter the requirements of Trial Rule 77(K) which requires that, before Court Records may be made available through the internet or other electronic method, the information to be posted, its format, pricing structure, method of dissemination, and changes thereto must receive advance approval by the Division of State Court Administration.*

**Immunity for Disclosure of Protected Information – Administrative Rule 9(J)**

This section was formerly section L and remains unchanged other than by its relocation and the change of its title.

Administrative Rule 9 (J) provides immunity from liability to any court, court agency, or Clerk of court employee, official, or an employee or officer of a contractor or subcontractor of a court, court agency, or Clerk of court who unintentionally and unknowingly discloses confidential or erroneous information. The grant of immunity is consistent with the provisions of the Indiana Access to Public Records Law, IC 5-14-3-10(c), which reads:

A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency who unintentionally and unknowingly discloses confidential or erroneous information in response to a Indiana Access to Public Records Law request under IC 5-14-3-3(d) or who discloses confidential information in reliance on an advisory opinion by the public access counselor is immune from liability for such a disclosure.

*Commentary to Administrative Rule 9(J)*

*This immunity provision is consistent with the immunity and protections provided by Indiana statute as found at IC 5-14-3-10(c).*

## **Specific Implementation Rules and Filing Procedures**

### **Other Rules Implementing Administrative Rule 9**

The Indiana Supreme Court has amended the rules set forth below to include provisions implementing Administrative Rule 9.

#### **Rules of Trial Procedure**

**Trial Rule 3.1(D)**     **“Confidentiality of Information Excluded from Public Access.** Any appearance form information or record defined as not accessible to the public under to Administrative Rule 9(G)(5) shall be filed in a manner required by Trial Rule 5.”

**Trial Rule 5(G)**     **“Confidentiality of Court Records.** Court Records are accessible to the public except as provided in Administrative Rule 9(G).”

“Any Court Record excluded from public access under Administrative Rule 9(G) is required to be filed in accordance with Administrative Rule 5(G)(5).”

**Trial Rule 58(C)**     **“Court Records Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G).** Every court that issues a judgment or order containing documents or information excluded from public access pursuant to Administrative Rule 9(G) shall comply with the provisions of Trial Rule 5(G)(5).”

#### **Rules of Criminal Procedure**

Rule of **Criminal Procedure 1.1**     **“Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G).** Documents and information excluded from public access pursuant to Administrative Rule 9(G) shall be filed in accordance with Trial Rule 5(G).”

#### **Rules for Small Claims**

**Small Claims Rule 2(E)**     **“Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G).** Documents and information excluded



from public access pursuant to Administrative Rule 9(G) shall be filed in accordance with Trial Rule 5(G).”

### **Procedure for Post-Conviction Remedies**

**Post Conviction Rule 1, Section 3(c).** “The Clerk shall file documents and information excluded from public access pursuant to Administrative Rule 9(G) in accordance with Trial Rule 5(G).”

### **Tax Court Rules**

**Rule 3(G).** “Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G). Documents and information excluded from public access pursuant to Administrative Rule 9(G) shall be filed in accordance with Trial Rule 5(G)(5).”

### **Rules of Appellate Procedure**

**Appellate Procedure Rule 2(N).** “Case Record, Court Record and Public Access. The terms “Case Record”, “Court Record” and “Public Access” shall have the same definitions provided in Administrative Rule 9(C).”

**Appellate Procedure Rule 9(J).** “All Court Records Excluded from Public Access. In cases where all Court Records are excluded from Public Access pursuant to Administrative Rule 9(G)(1), the Clerk shall make the appellate Chronological Case Summary for the case publicly accessible but shall identify the names of parties and affected persons in a manner reasonably calculated to provide anonymity and privacy.”

### **Procedure for Original Actions**

**Original Action Rule 3(J).** “Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G). Documents and information excluded from public access pursuant to Administrative Rule 9(G) shall be filed in accordance with Trial Rule 5(G).”

### **Trial De Novo**

**Trial De Novo Rule 4.** “Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G). Documents and information excluded from public access pursuant to Administrative Rule 9(G) shall be filed in accordance with Trial Rule 5(G).”

### **Filing Procedures**

Administrative Rule 9 does not prescribe a particular method for courts and Clerks to use and left implementation for local determination. Courts and Clerks must decide how to implement Administrative Rule 9 in their offices in compliance with the requirements of Trial Rule 5(G).

Decisions must be made about how confidential information will be received, entered, stored and made available for review or protected from review by unauthorized persons. Additionally, decisions are necessary concerning the handling of applications for access to confidential information and to prohibit access to information in a Court Record because both the applications and the information sought remain confidential pending a court ruling.

Each county must adopt a process for receipt of confidential information. Some of this information will be tendered upon the initial filing of a case, but some will be received during the pendency of the case. For ease of immediate identification, Administrative Rule 9(G)(5)(b) requires the use of a green paper form by which a party may tender confidential or identifying information to the Clerk for entry into the Case Record. Examples of the types of confidential information that will be tendered are: full Social Security Numbers, full account numbers, and full credit card numbers. In certain cases, such as protection orders, stalking, domestic violence, and criminal cases, addresses, dates of birth, and telephone numbers of witnesses and victims are also excluded from public access.

In order to secure compliance with the filing requirements of Trial Rule 5(G), Courts may want to adopt a Local Rule requiring certification of compliance by all parties and their counsel. A sample rule is contained in Appendix A, Form A-7.

Once received, confidential information is secured within the system so that access is restricted to those entitled to view the information. Both the information and the document containing the information are confidential requiring security against inappropriate disclosure.

The storage of information related to a case is often a combination of electronic as well as physical filing as opposed to all electronic or physical storage. Confidentiality often pertains to multi-page documents, e.g. custody reports or evaluations or pre-sentence reports.

There are a variety of acceptable means to preserve confidentiality:

1. Partial account numbers and Social Security Numbers and year of birth, in place of the complete number or date are acceptable. For example, a Social Security Number can be referenced as “xxx-xx-1234” rather than the complete number. To the extent the full Social Security Number is needed by the court, that one piece of data is retained on a separate green sheet and segregated from the rest of the public case file. The same would be true of account numbers (listed as “xxxx-xxxx-xxxx-9876” rather than having the full number) or dates of birth (listed as “1970” rather than month, day, and year).

2. If exhibits are filed with a pleading, e.g. a bank check for a proof of claim in a collections matter, the pleading can shield most of the account number, as demonstrated in #1 above, and the copy of the check is placed in an envelope or otherwise segregated from the public case file to prevent disclosure of the account number.

3. Encourage attorneys to file as much as possible for public access, and, preferably, have either a redacted duplicate copy of their complete filing so the Clerk’s office can have both a copy for the public case file as well as the complete filing. Alternatively, an attorney can file only

those elements of non-public data (such as Social Security Number, account numbers, etc.) on a separate green sheet, and use generic markers in the original pleading. In either of these instances, the Clerk's office can decide whether to keep non-public filings segregated completely from the public case file (essentially having two separate files) or whether to keep the non-public filings in an envelope or sub-folder with the public file.

4. Documents generated by the court, including orders, may contain confidential information. In these circumstances, take care that the original order is placed in the confidential Record of Judgments and Order and a redacted version is placed in the case file.

5. Where electronic storage of records is utilized, the court or Clerk's office have a duty to ensure that non-public data is not accessible at public walk-up terminals or any other form of remote access. This requirement applies to any court that maintains traditional paper case files but creates its Chronological Case Summary (CCS), party information and/or Record of Judgments and Orders (RJO) electronically as well as to courts that maintain all of such information by electronic means only.

Petitions under Administrative Rule 9 (G)(5) and (7) to exclude information from public access or obtain information previously excluded from public access are confidential from their filing (including the information itself) until the Court enters a ruling upon the application. All documents and information related to these applications is handled on a confidential basis and stored accordingly. Once a ruling is made on the application, the information is either returned to public access or remains stored confidentially according to the duration of the order.

The procedures required by Administrative Rule 9(G)(5)(b) do not apply to records sealed by court order under to IC-5-14-3-5.5 or otherwise or to records excluded from public access by Administrative Rule 9(G)(1).

## **Protection Order Proceedings**

Protection Order proceedings in all their variety involve the use of confidential forms for the collection and dissemination of information to the Courts, Clerks, Prosecuting Attorneys and law enforcement officials. Each confidential form is created on green paper for appropriate handling within the Court system. All protective orders issued including modifications, extensions and terminations thereof are now entered in the Indiana Protective Order Registry maintained by the Division of State Court Administration in the Indiana Court Information Extranet (INcite).

For general information: <http://www.in.gov/judiciary/admin/3245.htm> .

To sign into the registry: <https://mycourts.in.gov/> .

As noted in the Protection Order Deskbook, many Clerks have written instructions given to parties who wish to petition for the issuance of a protective order before they begin to fill out the forms. These written instructions should identify and address information that is confidential under the proceedings and how confidential information must be handled by the Courts.

## **Unrepresented Litigants**

Unrepresented litigants are generally unfamiliar with the rules and procedures of the legal system and present a unique problem with regard to handling confidential information under Administrative Rule 9. Clerks, as the initial recipients of the pleadings filed by unrepresented individuals, need to carefully examine documents received to determine whether the documents contain information that is confidential.

Many Courts provide forms for the use of parties who want to file their own cases and represent themselves. This occurs most frequently in domestic relations cases or in small claims cases. Courts that provide forms for unrepresented parties should create Administrative Rule 9 compliant forms.

## **Handling Non-Compliant Filings**

Unrepresented litigants or attorneys may file documents, pleadings, or exhibits that do not comply with the provisions of Administrative Rule 9. In most cases, it would be helpful to assist and educate litigants and attorneys on the requirements of the Rule.

Since a filed document, pleading, or exhibit could present a serious violation of the Rule, the following is suggested as an acceptable method to deal with the problem:

1. note the filing of the pleading on the Chronological Case Summary but impound it as a confidential document,
2. refer the impounded document to the Court,
3. the Court then enters an order (see Appendix A Order to Comply with Administrative Rule 9) requiring the filing party to submit an amended pleading in compliance with the rule within a limited period of time or suffer the striking of the pleading and
4. during the period of time before submission of the compliant pleading, the Court can extend the time for filing a responsive pleading.

Other strategies that meet the spirit and goals of AR 9 are also acceptable.

## **Administrative Rule 9 and Appeals**

Provisions regarding the role of Administrative Rule 9 and appellate proceedings have been relocated to the Rules of Appellate Procedure and appear in various locations.

### **Appellate Rule 23(F) – Confidentiality of Court Records on Appeal**

- (1) Court Records are accessible to the public, except as provided in Administrative Rule 9(G).
- (2) If a Court Record was excluded from Public Access in the trial court in accordance with Administrative Rule 9(G), the Court Record shall remain excluded from Public Access on appeal unless the Court on Appeal determines the conditions in Administrative Rule 9(G)(7) are satisfied.

(3) Any Court Record excluded from Public Access on appeal must be filed in accordance with Administrative Rule 9(G)(5).

Except for cases in which all Court Records are excluded from public access, the green paper requirements of Administrative Rule 9(G)(5)(b) will apply depending upon the circumstances of the record involved.

#### **Appellate Rule 28(A)(9) – Preparation of Transcript in Paper Format By Court Reporter**

- (a) In cases where all of the Court Records are excluded from Public Access pursuant to Administrative Rule 9(G)(1), the Transcript shall be excluded from Public Access.
- (b) If, during the hearing or trial a party or person identified any oral statement(s) to be excluded from Public Access, the Court Reporter must comply with the requirements of Administrative Rule 9(G)(5)(b) with regard to the statement(s) and must note in the Transcript the specific 9(G)(2) or 9(G)(3) ground(s) identified by the party or person.
- (c) Additionally, until the time the Transcript is transmitted to the Court on Appeal, any party or person may file written notice with the Trial Court identifying:
  - (i) the transcript page and line number(s) containing any Court Record to be excluded from Public Access; and
  - (ii) the specific Administrative Rule 9(G)(2) or 9(G)(3) grounds upon which that exclusion is based. (See Form #App. R. 11-3.)

This written notice must be served on the Court Reporter and, upon receipt of the written notice, the Court Reporter must refile the Transcript in compliance with the requirements of Administrative Rule 9(G)(5)(b) and must note in the Transcript the specific 9(G)(2) or 9(G)(3) grounds(s) identified by a party or person.

- (d) After the Transcript has been transmitted to the Court on Appeal, any request by a party or person to exclude a Court Record in the Transcript from Public Access must be made to the Court on Appeal and must contain the specific Administrative Rule 9(G)(2) or 9(G)(3) ground(s) upon which that exclusion is based. Upon receipt of an order from the Court on Appeal, the Court Reporter must re-file the Transcript in compliance with the requirements of Administrative Rule 9(G)(5)(b).

#### **Appellate Rule 29(C) – Exhibits**

If an exhibit was accompanied by the separate written notice required by Administrative Rule 9(G)(5)(a)(i)(b), the court reporter must comply with the requirements of Administrative Rule 9(G)(5)(b) when the exhibit is thereafter filed with the Trial Court Clerk.

## **Appendices**

The appendices contain a variety of information to assist trial courts and Clerks and their staff with issues that are likely to arise regarding access to public records.

Appendix A contains forms developed by the Division of State Court Administration for third party requests for access to bulk court data that will assist courts and those making a data request to handle the matter correctly under AR 9. This section also includes a sample letter suitable for use by the Clerk if a request for access is denied. A sample order for issuance if a party files a document that fails to treat confidential information in compliance with AR 9 is also included. A sample local rule requiring compliance with the requirements of AR 9(G)(5)(b) concerning confidential material in pleadings is also provided.

If a court contemplates providing remote access to court information, the checklist contained in Appendix B serves as a guide to adhering to the requirements of AR 9(E).

Appendices C, D and E contain answers to questions frequently referred to the Division of State Court Administration by Clerks, citizens and courts.

### **Appendix A – Forms and Sample Documents**

#### **Form A-1 - Request for Bulk Data/Compiled Information**

The current form is located at <http://www.in.gov/judiciary/admin/2460.htm> .

#### **Form A-2 - Request for Release of Bulk Data/Compiled Information Containing Information Excluded from Public Access**

The current form is located at <http://www.in.gov/judiciary/admin/2460.htm>.

#### **Form A-3 – Request for Summary Release of Compiled Information Not Excluded from Public Access**

The current form is located at <http://www.in.gov/judiciary/admin/2460.htm>.

**Form A-4 - Notice of Application for Release of Bulk Data/Compiled Information  
Containing Information Excluded from Public Access**

IN THE INDIANA SUPREME COURT  
CASE NUMBER \_\_\_\_\_

**NOTICE OF APPLICATION FOR RELEASE OF  
BULK DATA/COMPILED INFORMATION CONTAINING INFORMATION  
EXCLUDED FROM PUBLIC ACCESS**

To: \_\_\_\_\_  
(Name of Affected Person)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_

Notice is hereby given that an application has been made to the Indiana Supreme Court under Administrative Rule 9 (F)(4) for release of bulk data/compiled information containing information excluded from public access under Administrative Rule 9 (G). A copy of the application is attached.

Written objections may (may not) be filed.

If objections have been permitted, the deadline for filing an objection with the Indiana Supreme Court is: \_\_\_\_\_. Objections may be filed with the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court, 217 State House, 200 West Washington Street, Indianapolis, IN 46204.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Name of Applicant)  
(City, State & Zip Code)

## **Form A-5 - Sample Clerk/Court Response Letter Regarding Non-Access**

Dear (insert name of applicant)

We have received your recent request to obtain Court Records. We regret to advise you that the records you have sought are confidential and not accessible due to the application of Administrative Rule 9 of the Indiana Supreme Court.

If you desire to pursue access to these records, you may seek:

- a. an order under Administrative Rule 9(G)(7)(a)(ii) from the court having jurisdiction of the case, or
- b. a release of the information from each person to whom the sought information pertains under Administrative Rule 9(G)(7)(a)(i)Administrative Rule 9.

If you are successful in obtaining an order or release, you will receive the information sought upon production of the order or release.

Yours truly,

---

(Name)

(Title)



## Form A-6 - Order to Comply with Administrative Rule 9

STATE OF INDIANA  
IN THE \_\_\_\_\_ COURT  
CASE NO. \_\_\_\_\_

Insert            )  
Case             )  
Caption          )

### Order to Comply with Administrative Rule 9 or Suffer Sanctions

The Court has received a pleading filed by (Insert Name of Party) denominated as (Insert Title of Pleading) that was impounded because it does not comply with the requirements of Administrative Rule 9 of the Indiana Supreme Court.

It is Ordered that (Insert Name of Party) shall file an amended pleading that fully complies with Administrative Rule 9 [within (Insert Number) days] [on or before (Insert Date)]. Failure to comply will result in the striking of the pleading from the record. Pending the filing of the amended pleading, the time for the filing of responsive pleadings shall be extended for an equal period of time.

The Clerk shall serve a copy of the within order and the impounded pleading upon (Insert Name of Party) or their attorney of record by certified mail and shall serve a copy of this order only upon all other parties of record.

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge, (Insert Court Name)

## **Form A-7 - Local Rule Certifying Compliance with Trial Rule 5 (G)**

Local Rule [Insert Number per TR 81(E)]

### **Certification of Compliance of Pleadings With Trial Rule 5 (G)**

All pleadings filed by a party shall contain a verification certifying that the pleading complies with the filing requirements of Trial Rule 5 (G) applicable to information excluded from the public record under Administrative Rule 9 (G).

A certification in substantially the following language shall be sufficient:

I/We hereby certify that the foregoing document complies with the requirements of Trial Rule 5 (G) with regard to information excluded from the public record under Administrative Rule 9 (G).

\_\_\_\_\_  
(Signed by party or counsel of record)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date)

## **Form A-8 – Assurance of Confidentiality**

This form can be found at <http://www.in.gov/judiciary/4235.htm> .

## **Form A-9 – Notice of Exclusion of Confidential Information from Public Access**

This form denominated as Administrative Rule 9 Form 9-1 is located at <http://www.in.gov/judiciary/4235.htm> .

## **Appendix B - Remote Access to Court Information Checklist**

### **1. Which records?**

- a. Minimum Required by [TR 77\(K\)](#) and [AR 9\(E\)](#)
  - 1. Chronological Case Summary (CCS)
  - 2. Record of Judgments and Orders (RJO)
  - 3. Index of Litigants/Parties
  - 4. Case Filings List
  - 5. Calendars/Dockets with case numbers, captions, date, time and hearing locations
- b. Other designated records.

### **2. Who must propose provision of remote access?**

- a. Clerk and
- b. Majority of the judges of the courts of record within the judicial circuit.

### **3. Elements of the proposal**

- a. Designation of the records for remote access and the specific information included
- b. Means for remote access provision
- c. Format for remote access
- d. Method for remote access pricing, if any,
  - i. County Commissioner adopted ordinances electronic system service fee ordinance per AR 9(E) must be submitted for approval.
  - ii. Ordinance method of collection, deposit, distribution and accounting with regard to the service fee must be approved by the State Board of Accounts [Administrative Rule 9(E)].
- e. Method of dissemination
- f. Contracts with Case Management System and Internet Services Provider must comply with Administrative Rule 9(I)
- g. Contracts with vendor must clearly provide that
  - i. all information and data remain the property of the court
  - ii. any use of the data other than as specified by the Division's approval is prohibited
  - iii. Court data will not be sold, licensed or otherwise made available to any other entity for any other purpose,

- h. Provide a plan for periodic audits of the data provided over the Internet to assure compliance with Administrative Rule 9, other laws and the approval received from State Court Administration
- i. Demonstrate the manner in which the Internet display will provide appropriate advice and/or disclaimer to users about the non-official status of the information displayed.

**4. Who has final approval of proposals for remote access?** Division of State Court Administration.

**5. Do changes to previously approved remote access proposals require approval?** Yes.

## **Appendix C – Clerk FAQ's**

**Q1. How do we handle a pleading or document that contains confidential information that is not placed on green paper?**

- A.** Education and assistance provided to attorneys and litigants will promote the proper drafting of pleadings and documents for filing. If a pleading or document is offered for filing that seriously violates Administrative Rule 9, the best practice is to file the pleading and note the filing in the Chronological Case Summary but impound it as a confidential document. Refer the confidential document to the Court which can then enter an Order to Comply with Administrative Rule 9 or Suffer Sanctions (see Appendix A, Form A-5) directed to the filing party to submit an amended pleading in compliance with the rule within a limited period of time or suffer the striking of the pleading. Pending the expiration of the time given to file the amended pleading, the Court may extend the time for filing a responsive pleading. This same procedure should be followed in the rarer instance of the tendering of a non-conforming document by a person or entity that is not a party to the litigation, e.g. a response by an employer concerning a wage assignment, income withholding order or garnishment order.

**Q2. Must information that was otherwise publicly available before January 1, 2005, be redacted after January 1, 2005.**

- A.** Administrative Rule 9 does not require the Clerk's office to redact information in Court Records that was publicly available prior to January 1, 2005. The intent of the rule is that parties filing documents will comply with the basic confidentiality requirements of the rule and place information that the court may need, such as Social Security Numbers and account numbers, on a confidential filing form that remains segregated from other publicly available materials in a case file.

Care should be given that information that was public when entered into the record but has now become confidential with implementation of the rule should not be given wider dissemination; e.g. posting on a website.

**Q3. How fast must a Clerk or a court provide requested information?**

- A. Courts and Clerks should endeavor to provide information as promptly as possible. With very few exceptions, Administrative Rule 9 does not set time limits for providing information or replying to requests for information. The Indiana Public Record law, , establishes a timeframe of twenty-four hours if the requesting person is physically present in the office and seven days to respond to written or facsimile requests for public records from governmental agencies or entities. The response period may be observed by actually producing the requested records or by advising the applicant that records will or will not be produced.

**Q4. Can we charge a fee for the time involved in responding to a request for information?**

- A. A court or Clerk may charge for actual time and materials expended in responding to a request. These charges may include a reasonable charge for photographic copies, tape recordings, etc.

Charges by Clerks must comply with IC-5-14-3-8 regarding copies from public agencies (counties). The statute specifically exempts from its coverage the judicial department of government. Courts should adopt fee structure substantially in conformance with those authorized by existing statutes.

**Q5. Must a Clerk or court employee monitor a person examining a record?**

- A. Administrative Rule 9 has not changed any requirements relating to procedures that a court or Clerk office follows in allowing individuals to examine court documents or files. Court and Clerk offices are already responsible to ensure that the court files are not damaged or altered in any way. Confidential material included in the file but maintained in a sealed envelope, or included in the file on confidential filing forms should be removed by a Clerk or court employee prior to providing a file for examination. Clerk and court offices are encouraged to control the examination of original court files in such a way as to prevent damage or unauthorized modification or changes to the Court Records.

**Q6. Must we provide a place for the public to review records?**

- A. Administrative Rule 9 does not require that space be given to the public to review records. As a practical matter, it is advantageous to provide some space or public terminals for public examination of records so that Clerk or court employees may monitor this activity and ensure that records are neither destroyed nor modified.

**Q7. Are records that were public and in existence prior to Administrative Rule 9 now confidential?**

- A. No. Records which were filed or created prior to January 1, 2005, that were open to public access when they were filed or created remain public even if they contain

information now excluded from public access, such as Social Security Numbers or account numbers, and no redactions are required. Records that were confidential before January 1, 2005, remain confidential.

**Q8. If requested, do we have to provide a list of cases with case numbers filed each day? Judgments entered – civil, criminal?**

- A. The index of case filings except for case types that are confidential is considered a public record under Administrative Rule 9, and would be a record that could be requested and should be provided by the court or the Clerk's office, or made available on the Internet or for public inspection during normal office hours. Similarly, civil judgments and criminal judgments that are recorded in the Judgment Book are public records and should be provided by the Clerk's office or made available for public inspection.

Civil and criminal judgment records exist separately within their respective cases and a court or Clerk is not required to create a list of civil or criminal judgments entered per day for production or public view. However, the judgments entered in individual cases are public records available for viewing or production upon request.

**Q9. Which adoption records are confidential?**

- A. Records of adoptions did not become confidential until July 8, 1941 when Acts 1941, Chapter 146, Section 6 became effective. Legislation concerning adoptions enacted before 1941 focused on the issue of providing legal proof of heirship so that the adopted child became an heir at law of the adoptive parents. The intent of the pre-1941 legislation was to make the adoption a public matter. All adoptions that took place before July 8, 1941 were recorded in the civil or probate order books.

Records of adoptions that took place before July 8, 1941 are not confidential by statute or under Administrative Rule 9 and should be open to public access.

All records about adoptions taking place after July 8, 1941 are confidential. Chronological Case Summaries, all orders and judgments, the case file, and index entries concerning an adoption should be kept confidential. Judgments and orders concerning an adoption should be placed in the Confidential Record of Judgments and Orders.

**Q10. In cases involving child abuse, what is considered confidential and what would be open to public access?**

- A. According to statutory law and to Administrative Rule 9, the records concerning child abuse that must be kept confidential are the reports and other information found in the case files submitted to the courts by the Division of Family and Children including its county offices that contain local child protection services. Allegations contained in pleadings filed in cases that are not confidential by law or rule do not constitute "records" that are confidential under AR 9(G)(2). Chronological Case Summary entries, as

prescribed in Trial Rule 77(B), and entries in the Record of Judgments and Orders, as prescribed by Trial Rule 77(C), are open to public access.

**Q11. Do Juvenile CHINS (JC) cases fall under the child abuse category of confidential records?**

- A. No, but the cases are confidential anyway. Cases that generally fall into the child abuse category are adult criminal cases and some civil matters.

**Q12. What if child abuse allegations become part of a divorce case? How should they be handled in the context of divorce proceedings?**

- A. Administrative Rule 9 recognizes that there are situations when a matter deemed confidential by statute will become an issue for public resolution within the context of a judicial proceeding. Although child abuse matters are deemed confidential, such matters also could be the issue in a contested domestic relations case in which a party has the right to a public proceeding. Under Administrative Rule 9, the public proceeding prevails and the allegations are considered public unless:

1. a party or a person affected by the release of the information affirmatively requests, prior to or contemporaneously with its introduction into evidence, that the information remain excluded from public access under AR 9(G)(4),
2. the court makes an individual ruling on the matter and excludes the information from public access under subsection (G)(5) or
3. seals the records under to IC-5-14-3-5.5.

**Q13. What is open to the public in juvenile delinquency cases and what is confidential?**

- A. Administrative Rule 9 permits the disclosure of those juvenile records specifically deemed open under statute. The statutes involved are found in IC 31-39-2, which is entitled “*Persons Entitled to Access to Juvenile Court Records.*” For example, IC 31-39-2-8 discusses public access to records of juvenile delinquency proceedings. Under subsection (a) juvenile records are available to the public ...

*whenever a petition has been filed alleging that a child is delinquent as the result of any of the following alleged acts or combination of alleged acts:*

- (1) An act that would be murder or a felony if committed by an adult.*
- (2) An aggregate of two (2) unrelated acts that would be misdemeanors if committed by an adult, if the child was at least twelve (12) years of age when the acts were committed.*
- (3) An aggregate of five (5) unrelated acts that would be misdemeanors if committed by an adult, if the child was less than twelve (12) years of age when the acts were committed.*

However, under subsection (b) only certain information and records may be made available to the public even in the three situations discussed above. *Only* the following information may be released to the public:

- (1) *child's name;*
- (2) *child's age;*
- (3) *nature of the offense;*
- (4) *chronological case summaries;*
- (5) *index entries;*
- (6) *summons;*
- (7) *warrants;*
- (8) *petitions;*
- (9) *orders;*
- (10) *motions ("excluding motions concerning psychological evaluations and motions concerning child abuse and neglect"); and*
- (11) *decrees;*

If the child has been adjudicated a delinquent child for an act or combination of acts as outlined above in IC 31-39-2-8 (a), then the child's photograph also may be released.

It is the duty of the Clerk to keep all other records confidential of the child alleged to be or adjudicated a delinquent child. Most of the confidential records are known as the "*social*" as opposed to the "*legal*" records of the juvenile court. These "*social*" records include evaluations from probation officers, case workers, physicians, guardians ad litem, school guidance counselors, and psychologists. **The statutory language includes the following instructions to the Clerk: "*The Clerk of the juvenile court shall place all other records (excluding the eleven "legal" records listed above) of the child alleged to be or adjudicated as a delinquent child in an envelope marked "confidential" inside the court's file pertaining to the child.*"** The confidential information in the envelope may only be released to those authorized to receive such information. In addition, "*the identifying information of any child who is a victim or a witness shall remain confidential.*"

IC 31-39-2-10 allows a permissive disclosure of "legal records" if such release best serves the "*interests of the safety and welfare of the community.*" When exercising this discretion, the court ...

*shall consider that the best interests of the safety and welfare of the community are generally served by the public's ability to obtain information about:*

- (1) the alleged commission of an act that would be murder or a felony if committed by an adult; or*
- (2) the alleged commission of an act that would be part of a pattern of less serious offenses.*



Under AR 9(G)(1) when evidence in Case Records that is excluded from public access pursuant to AR 9 is admitted into the record of a hearing that is not open to the public by statute or court order, the information remains excluded from public access. Thus, anyone seeking access to the information must petition the court for access.

The issue of access is subject to IC 31-39-2-10 and also AR 9(G)(7) which appear to pose a conflict. The Records Management Committee has examined this issue and adopted the view that AR 9(G)(7) controls, thus requiring proof by clear and convincing evidence in order to authorize disclosure.

**Q14. In cases where civil judgments occur as a result of a juvenile delinquency case, should the child's name be placed in the Judgment Docket?**

- A. In situations where civil judgments arise against a juvenile in a juvenile case, the juvenile's name should be placed in the Judgment Docket. Neither the Indiana Code nor AR 9 have provided for the confidentiality of money judgments rendered against juveniles. Under I.C. 34-55-9-2, money judgments become liens against the real property and chattels real of the judgment debtor if it has been entered and indexed as required by law. Failure to index the judgment as required by I.C. 33-32-3-2 deprives the judgment creditor of their lien.

**Q15. Are paternity cases confidential?**

- A. Paternity records became confidential on July 1, 1941. Before 1941, paternity matters were handled as bastardy proceedings, and the records generated by these proceedings were not, and are not, confidential. All records concerning paternity cases filed on or after July 1, 1941, are confidential until July 1, 2014 when records involving proceedings that pertain to paternity, custody, parenting time and child support issues concerning a child born to parents who are not married to each other become accessible as a public record.

Effective July 1, 2014 the Indiana Supreme Court amended Administrative Rule 9(G) so that paternity Case Records created between July 1, 1941 and July 1, 2014 remained confidential. As a result the public may have access to Chronological Case Summaries, Index entries, summonses, warrants, petitions, orders, motions and decrees entered after July 1, 2014.

**Q16. In situations where civil judgments occur as a result of a paternity case, should the names of the parties be placed in the Judgment Docket?**

- A. In situations where civil judgments arise from paternity cases, the names of the parties should be placed in the Judgment Docket. Neither the Indiana Code nor AR 9 have provided for the confidentiality of money judgments rendered against juveniles. Under I.C. 34-55-9-2, money judgments become liens against the real property and chattels real of the judgment debtor if it has been entered and indexed as required by law. Failure to

index the judgment as required by I.C. 33-32-3-2 deprives the judgment creditor of their lien.

**Q17. How are pre-sentence reports handled with the general court file?**

- A. By statute (see IC 35-38-1-12 and IC 35-38-1-13) and Administrative Rule 9(G)(2)(b), pre-sentence reports are confidential. The reports should be produced on green paper.

The best practice is to file and maintain these reports separately from the case file. If the pre-sentence reports are placed in the case file, then procedures such as placing the pre-sentence report in a sealed evidence envelope should be used.

**Q18. Are victims of crimes allowed to view pre-sentence reports and provide input to them?**

- A. In 1999, the General Assembly enacted legislation to give victims of crimes certain rights. One of these rights was to have greater input into the sentencing process including “the right to make a written or oral statement for use in the preparation of the pre-sentence report” [see IC 35-40-5-6(a)]. Notwithstanding the confidentiality requirements of IC 35-38-1-13, “*the victim has the right to read pre-sentence reports relating to the crime committed against the victim*” with certain exceptions. Victims still may be restricted from seeing the following information included in the pre-sentence report [see IC 35-40-5-6(b)]

- *The source of the confidential information*
- *Information about another victim*
- *Other information determined confidential or privileged by the judge in a proceeding.*

Under IC 35-40-6-7(5), the prosecuting attorney has the duty of notifying the victim of “*the victim’s right to review the pre-sentence report, except those parts excised or made confidential by*” IC 35-40-5-7.

**Q19. What is open to public access and what is confidential in underage marriage petition cases?**

- A. Under statute and Administrative Rule 9(G), underage marriage petitions and the orders resulting from these petitions are confidential. IC 31-11-1-6(c) states, “*A court’s authorization granted under subsection (a) [subsection (a) refers to the granting of an underage marriage license by the court] constitutes part of the confidential files of the Clerk of the circuit court and may be inspected only by written permission of a circuit, superior, or juvenile court.*” Such orders are excellent candidates for inclusion in the Confidential Record of Judgments and Orders. Case files, Chronological Case Summaries, and court orders concerning underage marriage petitions and orders should be kept confidential. Ironically, the marriage license records created because of the court order are public records.

**Q20. What case type designation under Administrative Rule 8 should be used with underage marriage petition cases?**

- A. The *Civil Miscellaneous* (MI) case type designation should be used. Some Clerks and courts have mistakenly been using the *Juvenile Miscellaneous* (JM) case type designation in underage marriage petition cases rather than the *Civil Miscellaneous* (MI) case type designation. As stated in IC 31-11-1-6(b), "*a circuit or superior court*" may receive a petition and make an order authorizing the Clerk of the circuit court to issue a marriage license to the underage petitioner(s). Only a juvenile court, or a court with juvenile jurisdiction, may handle a *Juvenile Miscellaneous* (JM) case while all circuit and superior courts may handle a *Civil Miscellaneous* (MI) case.

**Q21. When do arrest warrants, search warrants, and indictments or informations become open to public access?**

- A. Administrative Rule 9 has attempted to incorporate the practice of many courts concerning arrest warrants, search warrants, and indictments and informations. Warrants and indictments need to be kept confidential if they are going to accomplish their intended purpose. However, once they have been served and the Clerk has knowledge of service, then there is no longer a need for confidentiality. Administrative Rule 9(G)(2)(b) makes arrest warrants, search warrants, and indictments and informations confidential, if ordered by the court, until the return of duly executed service. To the extent that any of these documents contains complete Social Security Numbers or account numbers, provisions must be made to ensure compliance with the non-public nature of that information, such as filing the warrant, indictment or information on green paper.

**Q22. What is confidential and what is open to public access in mental health cases?**

- A. The main intention of Administrative Rule 9 in dealing with mental health cases is to protect the personal medical records of the person facing a mental health hearing. In order to comply with state law and Administrative Rule 9(2)(b), the medical records must be kept confidential.

One area of confusion that has developed concerning mental health cases is how the name of the person involved in a mental health hearing should be entered in the appropriate records. The full name of the person involved should be listed on the Chronological Case Summary, and this record, including the non-confidential portions of the Case Record, are open to public access.

If court orders resulting from a mental health hearing contain confidential medical information, orders in mental health cases should be placed in the Confidential Record of Judgments and Orders. However, a court's conclusion that a person suffers from a mental disease or defect, and even stating it with particularity, is not confidential medical information.

**Q23. Since several of the inheritance tax forms are confidential, what are some filing strategies when dealing with inheritance forms within an estate case?**

- A. Several filing strategies exist on how to manage inheritance tax records, and one of these is to set up a dual filing system for estate case files with the open records being placed in one file and the confidential records being kept in the other. A second strategy would be to place the confidential inheritance records in a separate file drawer with the case number placed on the forms. A third strategy would be to place the confidential inheritance tax forms in a sealed envelope and place them in the estate case file.

**Q24. What information concerning jury lists is open to the public?**

- A. Under Jury Rule 10, personal information relating to a juror or prospective juror not disclosed in open court is confidential, other than for the use of the parties and counsel. The court is required to maintain that confidentiality to an extent consistent with the constitutional and statutory rights of the parties. Jury lists were included in Administrative Rule 9 to prevent problems such as the harassment of jurors. Some personal information may be disclosed in the jury selection process, and this information will become part of the public record. However, there is no requirement that addresses, telephone numbers, and other matters of a personal nature be published in the Record of Judgments and Orders. Under IC 33-4-5-9(b) and IC 33-4-5.5-7, the jury lists (names only) will be placed in the Record of Judgments and Orders that are open to the public.

**Q25. How should orders of expungement be handled?**

- A. Orders of expungement are confidential, and they should be placed in the Confidential Record of Judgments and Orders. It will be necessary for judges to state very clearly in the order whether the records to be expunged are only records dealing with the arrest or whether the Court Records concerning the case are to be expunged as well. Court Record

**Q26. What is the purpose of the Attorney General's Address Confidentiality Program?**

- A. The Address Confidentiality Program through the Office of the Attorney General has been established under IC 5-26.5, and a person, or a minor or incapacitated person for whom an application has been made, who has been a victim of domestic violence and who has a valid protective order may participate in this program. This program makes the Office of Attorney General an agent for the participant for purposes of service of process and receipt of mail.

Under IC 5-26.5-2-3(b), for purposes of the Indiana Access to Public Records Law (IC 5-14-3), *"the name, address, telephone number, and any other identifying information relating to the program participant are declared confidential."*

**Q27. What are the Clerk's duties concerning confidential materials in a Protection Order case?**

- A. The duties of the Clerk of court concerning the maintenance of a confidential file and the handling of the Confidential Form (confidential under IC 5-2-9-7) are outlined in IC 5-2-9-6(b). Under IC 5-2-9-6(b)(1), the Clerk is to *"maintain a confidential file to secure any confidential information about a protected person designated on a uniform statewide form prescribed by the division of state court administration."*

Under IC 5-2-9-6(b)(2), the Clerk of court is to provide a copy of the Confidential Form *"that accompanies the Indiana order to the following:*

- (A) *The sheriff of the Indiana county in which the order was issued.*
- (B) *The law enforcement agency of the municipality, if any, in which the protected person resides.*
- (C) *Any other sheriff or law enforcement agency designated in the Indiana order that has jurisdiction over the area in which a protected person may be located or protected."*

The entirety of the Protective Order case file is not confidential. Only the original of the Confidential Form filed by the petitioner or by the prosecuting attorney is to be placed in the confidential file that the Clerk has established.

A second item that will be placed in the confidential file will be the "Confidential Page" (page four) for a change of address of the Notice of Extension or Modification form. If either the petitioner's address or the respondent's address changes, then page four (4) of the form must be completed by the petitioner and filed with the Clerk, and the Clerk should place the original of this page in the confidential file. Please note, however, that the change of address page (page four) will only be completed and filed with the Clerk if there is a change of address. The Confidential Page is confidential because it contains the address and the telephone number of the petitioner and an alternate telephone number and address for notification purposes.

If the Confidential Page is filed along with the rest of the Notice of Extension and Modification form, a copy of the Confidential Page will be sent to the Protection Order Depositories listed above along with the rest of the form. The original, as noted, is to be placed in the confidential file as required by IC 5-2-9-6(b)(1).

**Q28. Should the petitioner's address and telephone number be placed on the CCS in a Protection Order case?**

- A. Since the Chronological Case Summary in a protective order case is not confidential, the petitioner's address and telephone number should not be placed on the CCS form. While IC 34-26-5-7 specifies that a petitioner may omit providing an address on all nonconfidential documents filed with the Clerk, IC 5-2-9-7 provides that all information provided on the confidential form required of all petitioners is confidential. The form

requires the furnishment of a petitioner's address as well as telephone number. Rather, it is recommended that the following information be used instead: *"The address and the telephone number of the petitioner are confidential under IC 5-2-9 and Administrative Rule 9 of the Supreme Court of Indiana."*

**Q29. Must subpoenas be issued using green paper?**

- A. Yes, if the subpoena contains the address, phone number, dates of birth or other information that tends to explicitly identify a natural person who is a witness or victim in a criminal, domestic violence, stalking, sexual assault, juvenile or civil protection order case.

Under IC 5-2-9-6(c), sheriffs and law enforcement agencies, after receiving a copy of the Confidential Form from the Clerk, are to establish a confidential file in their Protection Order Depositories in which the Confidential Form is to be kept.

**Q30. How should orders to seal records be treated regarding the RJO and the CCS?**

- A. Orders to seal records are confidential, and they should be placed in the Confidential Record of Judgments and Orders. The case file, all orders and judgments concerning the case in the Records of Judgments and Orders, and the original Chronological Case Summary should be placed in a sealed evidence envelope. The sealed records are to be treated as confidential records, and access to the sealed records will be restricted until an order to unseal the records is given.

The original Chronological Case Summary is to be placed in the sealed evidence envelope with the other sealed records. To replace the original Chronological Case Summary, a replacement CCS should be created containing only the case number, a statement that the case had been ordered sealed, and the date that the order to seal the records of the case had been issued.

Except the order to seal the records, which is to be placed in the Confidential Record of Judgments and Orders, all orders and judgments pertaining to the case are to be placed in the sealed evidence envelope. To replace all orders and judgments pertaining to the sealed case found in the Records of Judgments and Orders, a replacement page should be inserted containing only the case number, a statement that the case had been ordered sealed, and the date that the order to seal the records of the case had been issued.

**Q31. Can a party file a divorce petition using the initials only of the parties?**

- A. Court Records and questions of their confidentiality are governed by [Administrative Rule 9](#). Specifically [Administrative Rule 9\(G\)](#) focuses on documents that may be disclosed or held confidential. There is nothing in [Administrative Rule 9\(G\)](#) that allows a divorce petition between adults to be filed with initials only. That being said, [Administrative Rule 9\(G\)\(4\)](#) does have a process whereby a person affected by the release of the information may petition the court to prohibit public access to information in a Court Record. There must be notice to the other parties

and a hearing is always required. The standards a judge must use to grant this request are very high, however.

## **Appendix D – Citizen’s FAQ**

**Q1. What is the difference between records “not accessible for public access” and those that have been sealed under statutory authority?**

A. Records sealed under statute are more secure because no one is entitled to view the records without court authorization. Records “not accessible for public access” are only secure from public access but may be viewed by court or Clerk staff and the parties to the case and their lawyers.

**Q2. Can I obtain the mailing address and phone number of a party to a case?**

A. Yes, the mailing address and phone number of parties to a case is a record accessible to the general public unless a court order has been issued restricting access.

**Q3. Can I obtain the mailing address and phone number of a witness or the judge handling a case?**

A. No. These records are not accessible to the public.

**Q4. I was adopted in this county. Can I review the adoption file to learn about my natural parents and the reasons for my adoption?**

A. Information contained in court adoption files is generally excluded from public access by anyone including the person who was adopted. IC 31-19-24 provides a procedure to seek information related to an adoption and requires the filing of a written petition in a court with probate jurisdiction in the county where the adoption was granted.

**Q5. As a victim of a crime can I obtain the pre-sentence report related to the offense committed against me?**

A. While pre-sentence reports are designated as confidential Court Records and are not accessible to the public, a crime victim is entitled under IC 35-40-5-6 to **read** the report related to the crime committed against them except for portions containing the source of confidential information, information regarding another victim or information determined by the court to be confidential or privileged.

**Q6. Can I see an inheritance tax schedule or tax records to see if assets exist that may be transferred to a person against whom I have a judgment? What if the records were entered into evidence in a court proceeding?**

A. Court orders determining inheritance tax due regarding a transfer of property to a beneficiary are confidential as required by IC-6-4.1-5-10 but the inheritance tax schedule filed by the personal representative is not. Copies of the tax determination order must be sent to each beneficiary plus any other person who has filed for receipt of notice of court proceedings under IC-6-4.1-5-3.

Evidence presented in court proceedings is not confidential and may be reviewed unless an order has been entered prohibiting public access.

**Q7. Are my Case Records available to the public?**

A. All information contained in Case Records is accessible by the public unless declared confidential by Administrative Rule 9(G) unless a person affected by release of the information has sought or obtained an order prohibiting public access under Administrative Rule 9(G)(4) or has made a timely assertion of confidentiality under AR 9(G)(5).

**Q8. I want to handle my case without an attorney. What should I know about filing documents with the court?**

A. You are subject to the same standards and requirements as an attorney and must comply with the filing requirements of Administrative Rule 9 related to providing confidential information.

**Q9. Are all Court Records available through the Internet?**

A. No. Currently more than fifty courts have the ability to provide certain records, on a cost free basis, through the internet through the Odyssey case management system directed by the Indiana Supreme Court. Odyssey records are available at <https://mycase.in.gov/default.aspx> .

A smaller number of courts also offer internet case information through other case management systems. Other vendors offer similar services for a fee or provide a limited amount of free records. In many instances information must be obtained directly from the court or the court Clerk offices.



## Appendix E – Judge and Court Staff FAQ

**Q1. Is a recording of a court proceeding made by a court reporter a public record? If so, does the public have the right to come and listen to the recording as opposed to acquiring a transcript? Would they be entitled to make their own copy of the recording?**

**A.** Recordings of court proceedings made by court reporters are public records regardless of whether they are produced on magnetic recording tape, compact disk, stenotype, shorthand or digitally recorded upon a computer hard drive unless the specific case type is confidential under Administrative Rule 9. See Administrative Rules 9(C)(2) regarding the definition of “Case Record” and 9 (D)(4) regarding access to audio and video recordings of proceedings. The public has the right to obtain the record within a reasonable period of time after making the request.

The Access to Public Records law, I.C. 5-14-3, provides that if the requesting party is not present when the request is made, a response is required within seven days. The response must acknowledge the request and provide a statement of when and how the record will be provided even if production cannot be immediate, e.g. duties related to an ongoing trial.

A specific means of providing this type of record has not been defined but the time or difficulty of compliance is an important consideration. Allowing the requestor to listen to the recording may be too time consuming to be reasonable for the reporter or a court staff member since the custody and integrity of the original must be continuously maintained.

Providing a copy of the record is probably the most efficient and least time consuming method to provide public access. A reasonable charge for the production of the copy may be made and guidance on this issue may be found in IC-5-14-3-8. Under AR 10, each judge is administratively responsible for the integrity of the judicial records of the court and must ensure that measures and procedures are employed to protect such records from mutilation, false entry, theft, alienation, and any unauthorized alteration, addition, deletion or replacement of items or data elements. Under the Indiana Code of Judicial Conduct, Rule 2.17(1), a judge may authorize the use of electronic or photographic means for the presentation of evidence, the perpetuation of a record or other purposes of judicial administration. Under no circumstances should the original be provided to the requestor in order for them to create their own copy.

Requiring the purchase of a transcript would be so costly in many cases as to constitute a denial of access to the public record unless the requestor desires to obtain the record in that format. Given the time required to produce a transcript and the other duties of reporters, the reasonable time for producing the record may well lead the requestor to ask for a different format. If the case is on appeal, a copy of the transcript could be obtained from the Clerk upon its completion and filing.

In situations where the requested record results in provision of an audio and/or audiovisual copy of a court proceeding, the judge should issue an order specifically limiting its use and barring the recipient from broadcasting the received record in any manner.

**Q2. Are exhibits offered and/or introduced into evidence in a court proceeding public records? If so, must their review of them be supervised or may copies be created at their cost?**

**A.** Once identified and offered or admitted into evidence all exhibits are part of the public record unless the proceeding is confidential under Administrative Rule 9(G) or confidentiality was preserved under 9(G)(5).. If a review of the original is granted, the reporter or staff member should supervise because of their duty to maintain the custody and integrity of the exhibit.

The size, nature and extent of the exhibit will have a significant impact upon the time required by the reporter or staff member to allow their reading or viewing. The constraints of time also impact the reasonable time of and nature of the response. In many instances the production of copies of large documents at a reasonable charge will be the most efficient manner of responding to the request.

**Q3. Are documents that are prepared in the normal course of court administration and that may be used for personnel or administrative purposes public records?**

**A.** All administrative records produced by the court are public except for those listed in Administrative Rule 9(G)(3). Personnel records of a court are Court Administrative Records as defined by Administrative Rule 9(C)(3).

**Q4. Are juror questionnaires and the responses supplied by prospective jurors public records?**

**A.** Under Administrative Rule 9(G)(2)(b) and (3) and Jury Rule 10 personal information contained in juror questionnaires is confidential except for the use of the parties and counsel unless the information is disclosed in open court. Otherwise juror questionnaires and the responses of prospective jurors are public records.

**Q5. What if the parties waive their rights of confidentiality by filing documents containing information that would be confidential?**

**A.** Under Administrative Rule 9 a party does not have the right to file a document containing information concerning themselves or third parties deemed confidential under the rule unless they adhere to the requirements of the rule concerning how the information is to be presented.

**Q6. Can the parties waive confidentiality and avoid the filing requirements of Administrative Rule 9 or authorize the release of information?**

- A. Administrative Rule 9 does not contain a provision for a waiver of confidentiality except as stated in section G (6) and (7) which allows the release of (previously provided) information if it is released by all parties to whom it pertains. Parties must tender all information excluded from public access in the manner required by the rule.

**Q7. Litigation by unrepresented individuals is increasing with the prospect that confidential information will be included in documents filed with the court. Is the court required to examine these documents for compliance with Administrative Rule 9?**

- A. The responsibility for compliance with Administrative Rule 9 concerning filed documents rests upon the party filing the document. A court is not required to screen documents presented for filing. Section 9(J) provides immunity for unintentional or unknowing disclosure of confidential material. Since the Bar and public must be educated about the requirements of the rule and those that implement it, it would be a good idea to require the Clerk to provide information concerning confidentiality requirements to those who want to initiate a case.

If a pleading or document is offered for filing that violates Administrative Rule 9, the best practice is to file it, note the filing in the Chronological Case Summary but impound it as a confidential document. Refer the confidential document to the Court which can enter an Order to Comply with Administrative Rule 9 or Suffer Sanctions (see Appendix A) within a limited period of time or suffer the striking of the pleading. Pending expiration of the time given, the Court may extend the time for filing a responsive pleading. This same procedure should be followed if a non-conforming document is tendered by a nonparty to the litigation, e.g. a response by an employer concerning a wage assignment, income withholding order or garnishment order.

**Q8. Is it not futile to make Court Records confidential since parties often must present the information to other offices to transact business and those offices will not or cannot keep the information confidential?**

- A. We can only control the information that comes into our systems but it is better that we reduce the access to sensitive information than to add to the number of sources from which the information can be inappropriately obtained.

**Q9. Where do judges go when they have questions about issues arising from Administrative Rule 9?**

- A. Contact Dave Remondini at the Office of State Court Administration (317-232-2542) for assistance in dealing with the issue.

**Q10. What is the reasonable cost for providing information requested?**

- A. Standards already exist with respect to the reasonable cost of providing copies of documents by public offices but do not specifically apply to the judicial branch of government. See IC-5-14-3-8 and I.C. 33-37-5-1(b).

Courts should adopt a fee structure substantially in conformance with those authorized by existing statutes. AR 9(F) provides that in granting a request for bulk distribution or compiled information, the Supreme Court may charge the recipient the fair market value of the information received. In establishing a fee structure, a trial court should not exceed a fair market charge for the provision of the requested information.

**Q11. How do we handle questions that ask for more research information about the time cases take to finish, etc.?**

- A. This really presents a public relations question rather than a question concerning access to public information under Administrative Rule 9. Offices are not required to create a special report to respond to any inquiry or reconfigure things to provide information that is not otherwise created or retained in the ordinary course of the business of the office.

**Q12. What do we do with scandalous materials contained in a pleading even if it is true?**

- A. Unless information contained in a pleading is defined as confidential under Administrative Rule 9, it does not have to be treated in a confidential manner.

**Q13. Is information contained in the cover page of a protective order confidential?**

- A. Administrative Rule 9 defines the information that is confidential and the information that is not. It is important to remember that the identifying information can still be sent to law enforcement.

**Q14. Are bank account numbers and Social Security Numbers on supplemental proceedings and warrants confidential?**

- A. Generally, information entered into evidence in open court is not confidential and, therefore, accessible to the public. AR 9(G)(5)(a) provides that when confidential information excluded from public access by AR 9 is presented during court proceedings closed to the public, the information remains excluded from public access.

**Q15. How do we deal with the need to put specific account numbers and dollar amounts in an order?**

- A. Trial Rule 58(C) requires orders to have confidential information put on separate confidential pages.

**Q16. How do we handle the volume of confidential information that will arise in certain types of cases; e.g. small claims cases, and create a burden on staff and courts?**

- A. Administrative Rule 9 does not create a “one-size fits all” approach. Each county will have its own opportunity to determine the best and most efficient manner to implement the rule and handle confidential information within the general requirements of the rule.

**Q17. Does Administrative Rule 9 place a burden on the media or others if they come into possession of materials that should be part of the sealed record?**

- A. No. Issues such as this would likely have to be handled on a case-by-case hearing basis and would be very dependent upon the position taken, if any, by the person or entity whose information was obtained.

**Q18. What can be done if pleadings are filed that violate Administrative Rule 9?**

- A. The Clerk, as the recipient of the pleading offered for filing that does not comply, has the first opportunity to address the issue and is justified in declining to accept the document. Alternatively, the Clerk can immediately impound the document as confidential and provide it to the Court for further action.

Upon examination by the Court an order can be entered impounding the document and ordering the offending party to promptly tender a document in compliance with the rule. A failure to comply could result in the striking of the document from the record or another suitable sanction. (See Form A-5).

**Q19. How do you handle exhibits containing inappropriate materials?**

- A. Administrative Rule 9 does not make any explicit exception for exhibits. Parties who submit a Court Record that is confidential under Administrative Rule 9(G) are, immediately upon learning of the improper submission, obligated to comply with the requirements of the rule to ensure proper exclusion. See Administrative Rule 9(G)(6)(b). A Court Record includes both pleadings and their attachments as well as evidentiary exhibits. Administrative Rule 9In the event that an individual or entity wishes to make evidence introduced in a public proceeding non-public, the burden is upon that person or entity whose information will be disclosed to seek entry of an order prohibiting access under Administrative Rule 9(G)(5).

**Q20. What does a probation officer do if an insurance company or a representative of the U. S. military asks for the address of a probationer?**

- A. Probation records are confidential and may not be disclosed.

**Q21. We have received subpoenas for probation officers to testify about adult and juvenile probationers in civil cases. What should we do?**

- A. Since the testimony will probably involve a request to disclose confidential information contained in probation records, you should:
- a. consult with your judge,

- b. develop a response form approved by the judge and county attorney that cites Administrative Rule 9 and its restrictions disclosure of confidential information.

Remember that the parties are entitled to petition the court to allow disclosure of information that would otherwise be confidential.

**Q22. Can a court play its recordings for the media if it might be broadcast?**

A. [Administrative Rule 9](#) and [10](#) specify that judges must make sure the audio/video isn't broadcast (although it seems the only way to ensure that is to refuse to allow the making of copies).

**Administrative Rule 9(D) -- General Access Rule.**

- (1) A Court Record is accessible to the public except as provided in section (G).
- (2) This rule applies to all Court Records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.
- (3) If a Court Record, or portion thereof, is excluded from public access, there shall be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This sub-section (3) does not apply to court proceedings or administrative records which are confidential pursuant to law.
- (4) A court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court and to comply with the Code of Judicial Conduct, Rule 2.17 [former Canon 3(B)(13)]. This provision does not operate to deny to any person the right to access a Court Record under Rule 9(D)(1).

**Administrative Rule 10 – Security of Court Records**

(A) Court Responsibilities. Each judge is administratively responsible for the integrity of the judicial records of the court and must ensure that measures and procedures are employed to protect such records from mutilation, false entry, theft, alienation, and any unauthorized alteration, addition, deletion, or replacement of items or data elements.

**Commentary to Administrative Rule 10**

*The court is required to preserve the integrity of audio and video recordings of court proceedings. The judge may employ various methods for ensuring the recording is not altered, including but not limited to supervised playback for listening or copying, creating a copy of the recording for use during said playback, serving notice to the parties that the recording is being accessed, and providing a copy, clearly identified as such. As prescribed by Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)], because the court is further required to prohibit broadcasting or televising court proceedings, the*

*court may employ methods to restrict publication of copies of court proceedings made during the pendency of the case.*

In situations where the requested record results in provision of an audio and/or audiovisual copy of a court proceeding, the judge should issue an order specifically limiting its use and barring the recipient from broadcasting the received record in any manner.